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HONORABLE MARY K. DIMKE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

MICHAEL SCOTT BRUMBACK, an
individual, et al.,

Plaintiffs,

v.

ROBERT W. FERGUSON, in his official
capacity as Washington State Attorney
General, et al.,

Defendants.

NO. 1:22-cv-03093-MKD

JOINT STATUS REPORT

I. INTRODUCTION

Pursuant to the Court's Order Denying Plaintiffs' Motion for Injunctive and Declaratory Relief (ECF No. 20), issued on September 25, 2025, ECF No. 59, the Parties met and conferred on October 5, 2023, to discuss a Joint Status Report for the Matter. The ensuing Report memorializes the Parties' agreement and understanding of the case and ensuing matters and provides separate sections where the parties disagree on controlling matters. Plaintiffs were represented by S. Peter Serrano and Austin F. Hatcher; State Defendants were represented by Andrew

1 Hughes and William McGinty; County Defendants were represented by Callie
2 Castillo, and Intervenor-Defendants were represented by Zachary J. Pekelis.
3

4 The following summarizes the topics the parties discussed, and agreements
5 reached during the October 5, 2023, discussion. The parties request that the Court
6 issue a scheduling order setting the deadlines proposed by the parties below, or, if
7 the Court deems it necessary, set a scheduling conference.
8

9
10 **A. Statement of Nature and Complexity of the Case**
11

12 This matter involves a facial challenge to Washington's large capacity
13 magazine ban adopted in 2021 through Engrossed Substitute Senate Bill 5078 (SB
14 5078). SB 5078 bans the manufacture, importation, distribution, sale, or offering for
15 sale of large capacity magazines (defined as magazines having a capacity exceeding
16 10 rounds) within Washington, subject to certain exceptions. Plaintiffs contend SB
17 5078 violates the Second Amendment of the U.S. Constitution, and Article 1,
18 Section 24 of the Washington Constitution. They seek a judgment declaring
19 Washington's law unconstitutional and enjoining its enforcement.
20
21

22
23 Defendants Robert Ferguson and John R. Batiste and Intervenor-Defendant
24 Alliance for Gun Responsibility dispute Plaintiffs' claims in full.
25

26 Defendants Joseph A. Brusic and Robert Udell ("Yakima County
27 Defendants") do not take any position regarding the merits of Plaintiffs' action.
28

1 **B. Consent to U.S Magistrate**

2
3 The parties do not consent to the case being heard by a U.S. Magistrate Judge.

4
5 **C. The existence of any related cases pending in this or other jurisdictions**
6 **and a proposal for how to handle them**

7
8 The parties are aware of one lawsuit presenting a similar challenge to SB
9 5078. *Sullivan, et al. v. Ferguson, et al.*, No. 3:22-cv-o5403-DGE (W.D. Wash.)
10 raises claims under the Second Amendment, as does this matter.

11
12 **D. Service of Process**

13 Service of process is complete.

14
15 **E. Constitutionality of Statute**

16
17 The constitutionality of a statute is being challenged.

18
19 **F. Certification to State Supreme Court**

20 None sought.

21 **G. Deadline for Amending Pleadings**

22
23 The Parties agree that the deadline for amending pleadings is November 6,
24 2023.

25 **H. Deadline for Adding Parties**

26 The Parties agree that deadlines for adding parties is November 6, 2023.
27
28

I. Issues for Status/Scheduling Conference

1. Discovery Plan

a. Exchange of Initial Disclosures

The Parties will exchange Initial Disclosures by October 26, 2023.

b. Subjects, timing, and potential phasing of discovery

Plaintiffs' Position:

Plaintiffs believe that discovery should be limited to addressing, as “the Court must insist upon[,]” development of “a historical record demonstrating that the Second Amendment right to the manufacture, import, distribute, sell, or offer for sale of arms.” Order at 13:15-19.

In other words, discovery should be limited to development of such a record, such that Plaintiffs can demonstrate “the intent of the Framers of the Second Amendment, rooted in history” that such a right exists. *Id.* at 14: 3-4. Plaintiffs understand the Court’s directive to “demonstrate[] a historical record adequately supporting their respective positions on the question of whether the Second Amendment covers large capacity magazines.” *Id.* at 25:8-10. Finally, Plaintiffs understand that it is their “burden to establish that ESSB 5078 violates the Washington Constitution.” *Id.* at 29:2-3. To that end, Plaintiffs believe that discovery should be limited to those

1 facts necessary for the Parties to address those elements of the
2 Court's Order. Plaintiffs do not believe that discovery need be
3 phased and that it could, and should, close within 90 days of this
4 Court's Order on this Report.
5

6 State Defendants' Position:

7
8 As *Bruen* itself demonstrates in its detailed, 33-page discussion of
9 firearm carry laws, the historical analysis required by the Court's
10 new text-and-history test requires a detailed study of historical
11 source materials and a close analysis of the historical context in
12 which these materials arose. State Defendants intend to develop the
13 required evidence through expert historian testimony.
14

15
16 Expert testimony and other evidence will also likely be required to
17 help the trier of fact understand the nature, purpose, function, use,
18 and availability of historically regulated weapons and of the large-
19 capacity magazines at issue in this case, which are relevant to
20 whether the regulation of large-capacity magazines falls within the
21 purview of the Second Amendment.
22

23
24 State Defendants also intend to take fact discovery regarding
25 Plaintiffs claims in this matter, including discovery related to their
26 standing, evidentiary matters asserted in their Complaint and other
27 pleadings, and other topics within the scope of Rule 26.
28

1 Intervenor-Defendant's Position:

2 Intervenor-Defendant concurs in State Defendants' position.

3 Yakima County Defendants Position:

4 Yakima County Defendants contend they are nominal parties to
5
6 this action and no discovery should be required of them.

7
8 **c. Protocol for Production of Electronic Discovery**

9 Plaintiff's discovery requests may include requests for electronically stored
10 information ("ESI"). The parties have agreed to adopt the Model ESI Rules from the
11 Western District of Washington, for the control of ESI, where it is involved.
12

13
14 **d. Claims of Privilege, Protection of Confidentiality, and Proposed**
15 **Agreements**

16 The Parties do not anticipate seeking discovery of information to which claims
17 of privilege or protection may apply. The Parties therefore do not anticipate that
18 procedures for handling the inadvertent production of privileged information and other
19 privilege waiver issues are necessary at this time. If any disputes related to privilege arise,
20 the Parties agree to work in good faith to resolve the matter before bringing the issue to
21 the Court's attention.
22

23
24 2. Special Procedures

25
26 The parties agree that this case is not appropriate for any special procedures.
27 The parties reserve the right to revisit this assessment as the case progresses.
28

1 3. Modification of Standard Pretrial Procedures

2
3 The parties agree that no such modification is necessary for this case. The
4 parties reserve the right to revisit this assessment as the case progresses.

5
6 4. Need for Discovery Related Orders

7
8 The parties do not believe any discovery related orders are necessary or
9 appropriate at this time.

10
11 **J. Bifurcation**

12 The parties do not believe any trial of the issues should be bifurcated.

13
14 **K. Anticipated Motions and Suggested Dispositive Motion Filing Deadline**

15 The parties believe that this matter should be determined upon dispositive
16 motions (e.g. Motions for Summary Judgment). Plaintiffs and Defendants each offer
17 a proposed schedule for dispositive motions in Part O below.

18
19 **L. Trial**

20 The parties propose that the Court set a trial date after it rules on dispositive
21 motions, if any issues for trial remain. The parties propose that within ten business
22 days after such a ruling, that the parties meet and confer and jointly propose a
23 schedule for completing any remaining pre-trial activities and deadlines.

24
25 **M. Dispute Resolution**

26 The parties agree that this case would not benefit from private mediation.

N. Related Cases

The parties are aware of one lawsuit presenting a similar challenge to SB 5078. *Sullivan, et al. v. Ferguson, et al.*, No. 3:22-cv-05403-DGE (W.D. Wash.) raises a claim under the Second Amendment, as does this case, but *Sullivan* does not raise a claim under the Washington State Constitution. Additionally, an *en banc* panel of the Ninth Circuit is hearing an appeal in a Second Amendment challenge to California's large-capacity magazine restriction in *Duncan v. Bonta*, No. 23-55805 (9th Cir.).

O. Proposed Schedule

EVENT	PLAINTIFFS' PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
Initial Disclosures	October 26, 2023	Agreed
Deadline to Add Parties	November 6, 2023	Agreed
Deadline to Amend Pleadings	November 6, 2023	Agreed
Disclosure of expert testimony under FRCP 26(a)(2)	November 9, 2023	July 19, 2024
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	November 13, 2023	August 19, 2024
Service of Written Fact Discovery	November 6, 2023	State Defendants believe the Federal Rules of Civil Procedure and Local Civil Rules should govern the service and timing of discovery requests and responses
Expert Depositions	December 31, 2023	State Defendants believe the Federal Rules of Civil

EVENT	PLAINTIFFS' PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
		Procedure and Local Civil Rules should govern the service and timing of discovery requests and responses
All motions related to discovery must be filed by	December 13, 2024	August 19, 2024
Responses to Discovery Motions	December 20, 2023	The State Defendants believe that the Local Civil Rules should govern the timing for responses to discovery motions
Discovery completed by		September 20, 2024
Dispositive Motions	February 1, 2024 (the Parties may submit such Motions prior to this date, at their discretion)	<p>State Defendants propose a four-brief schedule as follows:</p> <ul style="list-style-type: none"> • Deadline for Plaintiffs to file Motion for Summary Judgment: October 14, 2024 • Deadline for Defendants to file combined Responses and Cross-Motions for Summary Judgment: November 12, 2024 • Deadline for Plaintiffs to file combined Reply in support of their

EVENT	PLAINTIFFS' PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
		Motion for Summary Judgment and Response to Defendants' Cross-Motions: December 3, 2024 <ul style="list-style-type: none"> • Deadline for Defendants to file Replies in Support of their Motions for Summary Judgment: December 16, 2024
Responses to Written Fact Discovery	December 6, 2023	State Defendants believe the Federal Rules of Civil Procedure and Local Civil Rules should govern the service and timing of discovery requests and responses
Fact Witness Depositions	December 31, 2023	State Defendants believe the Federal Rules of Civil Procedure and Local Civil Rules should govern the service and timing of discovery requests and responses
Deadline to file motions in limine		January 10, 2025
Trial Briefs		January 24, 2025
Deadline to Submit Proposed Pretrial Order		January 24, 2025
Pretrial Conference		At the Court's availability
Trial	February 2025	Agreed

1 **P. Date Case will be Ready for Trial**

2 The trial date would proceed, if necessary, after resolution of the dispositive
3 Motions addressed in Sections K and O, above, although the Parties agree that the
4 matter would not be ready for trial, if necessary, prior to February 2025.
5

6 **Q. Whether Trial will be Jury or Non-Jury**

7 Plaintiffs do not anticipate that this matter will go to trial, but should this
8 matter require a trial, Plaintiffs seek a non-Jury trial.
9

10 **R. Number of Trial Days Required**

11 Plaintiffs anticipate that trial would require no more than 5 days.
12

13 Defendants contend that, since all Parties agree that another meet and confer
14 to plan trial in this matter would be appropriate after the Court rules on dispositive
15 motions, specifying the number of trial days required at this juncture is premature.
16 In the alternative, at this time Defendants anticipate trial in this matter will require
17 no less than 8 court days.
18
19

20 **S. Trial Counsel Contact Information**

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T. The dates on which the trial counsel may have complications to be considered in setting a trial date

Plaintiffs are unavailable for trial on the following dates:

- February 12, 2024
- March 11-22, 2024
- April 1-5, 2024
- April 15-19, 2024

State Defendants' trial counsel are unavailable for trial on the following dates:

- February 2024
- April 8-30 2024
- July 29-August 15 2024
- January 1-January 20, 2025

Yakima County Defendants' trial counsel is unavailable for trial on the following dates:

- February 5-14, 2024
- April 22-May 9, 2024
- July 22-August 2, 2024

Intervenor-Defendant's counsel is unavailable for trial on the following dates:

- December 2–20, 2024
- March 3–14, 2025

STIPULATED TO, DATED AND RESPECTFULLY SUBMITTED this 13th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October 2023, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system.

DATED this 13th day of October 2023.

/s/Simon Peter Serrano
Simon Peter Serrano